

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Thomas Clobes,)
) File No. 23-cv-158
) (NEB/DTS)
Plaintiff,)
)
v.)
) Courtroom 13W
3M Company,) Minneapolis, Minnesota
) Thursday, April 20, 2023
Defendant.) 1:30 p.m.
)

BEFORE THE HONORABLE NANCY E. BRASEL
UNITED STATES DISTRICT COURT DISTRICT JUDGE
(MOTIONS HEARING - DOCKET NO. 11)

APPEARANCES:

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P R O C E E D I N G S

IN OPEN COURT

THE COURT: We are on the record. The case before us today is Thomas Clobes --

MS. ANDERSON: Clobes.

THE COURT: Clobes.

-- Clobes versus 3M Company, and the case number is 23-cv-158.

May I please have appearances, beginning with the plaintiff.

MS. ANDERSON: Yes. Good afternoon, Your Honor. Lexis Anderson with Barnes Law on behalf of plaintiff Thomas Clobes.

THE COURT: Good afternoon.

And for the defense.

MR. MARTIN: Good afternoon, Your Honor. Pat Martin from Ogletree Deakins on behalf of defendant 3M.

THE COURT: Good afternoon.

We are here on a motion to dismiss that was filed by 3M. I'd like to actually begin, however, with the plaintiff, because I have some questions about the response. And obviously 3M's had the last word, because they have filed a reply brief.

So why don't you take the podium first, Ms. Anderson.

1 MS. ANDERSON: Yes, Your Honor.

2 THE COURT: So I am concerned about the complaint
3 here because I am struggling to find an inference between
4 the -- or a link between the actions that were taken by 3M,
5 the emails and the loudspeaker and the mask requirement, any
6 link between that and religion. And so that obviously has
7 to happen in order to state a discrimination claim. And I'm
8 wondering if you can speak to that.

9 MS. ANDERSON: Yes, Your Honor.

10 So Mr. Clobes did have sincere religious
11 objections to the vaccine mandate, which was what all of
12 these announcements and pressuring of employees to take the
13 vaccine was all about, was 3M's overarching mandate. And
14 Mr. Clobes' health objections, he filed for religious
15 exemption from 3M, was very open about his religious
16 objections, including the use of aborted fetal cells, his
17 own personal family connections with his granddaughter and
18 her vaccine death. And he went through all of the steps
19 required to seek exemptions because of his experience, his
20 religious beliefs and was very open with 3M about that.

21 His religious exemption was denied. And even
22 still, you know, he was really subjected to constant
23 coercion from 3M to get vaccinated under threat of
24 termination. So Mr. Clobes was under the impression for
25 several months that he was going to be terminated because of

1 his sincere religious objections to the vaccine with no
2 recourse. He went through all of the required steps in
3 order to seek an exemption, was blocked at every direction.
4 And so that causal connection -- he was terminated as a
5 result because of 3M's unwillingness to grant his religious
6 exemption, have that individualized assessment of his
7 sincere religious beliefs.

8 THE COURT: Did you just say he was terminated?

9 MS. ANDERSON: Sorry? Oh, I'm so sorry. No.
10 Under threat of termination. He believed he was going to be
11 terminated. And 3M, you know, had had the federal mandate
12 up and lifted and perhaps would have, but he believed
13 sincerely that he was going to be terminated because of his
14 religious beliefs and his objections to the vaccine.

15 THE COURT: So my understanding from the, my
16 reading of the complaint is -- you've used the word
17 "religious objection was denied," but my reading of the
18 exhibits is a bit different, which is that they asked, 3M
19 wanted more information from him and while it was pending,
20 before they made a final decision on his objection, then the
21 mandate was lifted.

22 Do you find those to be at odds?

23 MS. ANDERSON: I believe that they did eventually
24 not grant the exemption, but they -- but they ultimately
25 never granted -- excuse me -- they never granted the

1 religious exemption either. And so he still believed that
2 he was under threat of termination.

3 THE COURT: Even after the mandate was lifted?

4 MS. ANDERSON: No, Your Honor. At that point he
5 understood there was no longer a threat of termination, but
6 up until that point there was. And even after they lifted
7 the mandate, there was still constant pressure from 3M to
8 get vaccinated.

9 THE COURT: And, again, I'm -- that is true that
10 pressure was true both for him, and at least there's nothing
11 in the complaint indicating that the person who sat next to
12 him or had an office next to him or worked next to him, who
13 didn't have a religious objection, wasn't subject to the
14 same emails, intimidation, et cetera.

15 MS. ANDERSON: It's true it was a company-wide
16 policy, but it just really impacted people who had those
17 sincere religious objections and were trying to go through
18 the recourse to get those exemptions and believed that they
19 were going to be terminated because they could not comply.

20 THE COURT: And one moment.

21 Under Title VII law and particularly some of the
22 cases that are cited in the defense brief, this theory that
23 general pressure to be vaccinated, even under threat of
24 termination, if not linked to age or religious belief or
25 another protected class, isn't a viable theory, how do you

1 respond to those cases?

2 MS. ANDERSON: Well, I think the cases that
3 defendant cites, first of all, don't, don't put the
4 plaintiff under pressure of termination. They don't have to
5 do with a company policy that would result in the employee's
6 termination because of those sincere beliefs or whatever
7 protected class they were part of.

8 The most analogous case is the *McManus versus*
9 *Department of Homeland Security* in Virginia that has to do
10 with the COVID mandate. And the employer had put up that
11 clock, the countdown clock to get vaccinated; but in that
12 case the plaintiff had brought age discrimination, and in
13 that case it was clear there was no causal connection
14 between his age and the fact that this clock and the
15 constant pressure was present.

16 In this case, however, we have sincere religious
17 objections. He sought a religious belief. That creates
18 that causal connection because of his sincere religious
19 objections to the vaccine, his seeking of religious
20 exemption, 3M's knowledge that he had that exemption, and
21 then the continuous pressure to get the vaccine, to the
22 extent that he experienced severe anxiety, had to seek out
23 outside help and counsel to deal with his anxiety. It
24 created that atmosphere of pressure, of coercive conduct, of
25 harassment that he experienced at 3M during that time.

1 THE COURT: So I guess I'm not seeing in the
2 complaint the link between -- or any allegation that the
3 harassment was individual to him, aimed at him versus
4 company, versus the entire company. In other words, I don't
5 see any allegations that the emails were directed at him
6 because they knew he had filed for exemption.

7 MS. ANDERSON: Well, as I understand, the emails
8 were company-wide, yes, but they still, you know, under 3M's
9 direction were sent to him.

10 And, you know, we would seek leave to amend the
11 complaint to perhaps include some ongoing conversations with
12 Mr. Clobes and supervisors and all of that to maybe show a
13 little bit more how he interacted directly with his, with
14 management at 3M.

15 THE COURT: All right. Thank you.

16 Mr. Martin.

17 MR. MARTIN: Thank you, Your Honor.

18 If we look at the complaint here, in
19 September 2021 3M moved ahead with its vaccine mandate in
20 the wake of the Federal Contractor Mandate. Mr. Clobes on
21 November 18th made his request for religious exemption. And
22 then, you know, the complaint is pretty clear on
23 December 10th the vaccine mandate was lifted.

24 Now, I know there was talk about it being refused.
25 The actual -- you know, if you look at the complaint, rather

1 than the brief, it's clear that it was never refused and
2 that it was actually still pending, based both on Exhibit B
3 and on the complaint. And if the court has any doubts about
4 that, the actual charge that Mr. Clobes filed, it's not in
5 the record, but, you know, it's embraced by the pleadings.

6 THE COURT: The EEOC charge?

7 MR. MARTIN: The EEOC charge. And I do have clean
8 copies for both the court and opposing counsel, if you want
9 them.

10 THE COURT: Sure.

11 MR. MARTIN: It says, "I requested an exemption to
12 the respondent's COVID-19 vaccination mandate that was in
13 the process of approval at the time the mandate was lifted."

14 THE COURT: Right. I think I reconcile these
15 tensions by -- I think it was under -- it sounds like it was
16 under advisement --

17 MR. MARTIN: Correct.

18 THE COURT: -- which means that it is correct to
19 say that it wasn't granted; maybe not correct to say that it
20 was refused, but certainly not granted. And I think
21 everybody's in agreement that it was under advisement and
22 they'd asked for more information about it and then it was
23 lifted. And so I'm not sure that it's critical to the
24 analysis.

25 What I'm hearing today is that the stress and

1 anxiety was twofold, one, before the religious exemption
2 because he felt like he would be terminated and, two, after
3 the vaccination requirement was lifted, the pressure,
4 nonetheless.

5 MR. MARTIN: Right. Yeah. And the operative
6 facts really are they're claiming two things. It's the
7 loudspeaker and email announcements about vaccines, and it's
8 also the having to wear a mask.

9 And if we look at those -- the complaint here
10 alleges two claims. One is religious discrimination under
11 the MHRA; one is religious discrimination under Title VII.
12 There are no separate claims for harassment, but I briefed
13 them as if there was because there were allegations within
14 those counts for harassment.

15 So, you know, if the court has questions about the
16 distinctions, I know we have two arguments on why the
17 discrimination claim fails, namely, no adverse action and
18 nothing that's plausibly pled that creates an inference of
19 discrimination. And then we similarly have two arguments on
20 harassment, you know, once again, no harassment because of
21 religion and then the severe or pervasive. So they're
22 pretty similar issues, the severe or pervasive versus
23 adverse action. I mean, I know they're different tests,
24 but, you know --

25 And I will say that, you know, there's no case

1 that says that anything close to this is an adverse action.
2 I mean, you look at the test in the Eighth Circuit, and it's
3 an adverse action is, quote, "a tangible change in working
4 conditions that produces a material employment disadvantage"
5 to the plaintiff. Nothing of the like happened here.

6 You know, the example letter given in the Eighth
7 Circuit are termination, demotion, transfer with change in
8 pay and negative evaluations. We have nothing close to that
9 here. We had a request that was pending. We had some
10 emails that said, Hey, you know, it would be nice if
11 everybody gets vaccinated, and you have, you know, similarly
12 over the loudspeaker.

13 But I think the court is right to focus in on the
14 lack of a link. And I think if we look at that Exhibit B,
15 it really shows that there's a lack of a link, because it
16 talks about how Mr. Clobes in making his request says,
17 basically, I've had to put up with these emails for
18 18 months about getting vaccinated. And that just shows
19 that the emails had nothing to do with his religious
20 request, which was just being made in the fall of 2021
21 versus the past 18 months when he said he was getting these
22 emails and loudspeaker announcements, which apparently
23 continued after. But to me it really shows that none of
24 this was targeted at him and that he had had this for
25 18 months before he even raised his hand and said

1 "religion," which I find to be quite telling and makes it
2 pretty impossible to have, you know, any sort of link
3 between him claiming a religious exemption and these email
4 announcements.

5 The masking is the masking. I mean, people were
6 subject to it. And, you know, having to wear a mask is not
7 any marker that somebody has a religious exemption. There's
8 lots of reasons people wear masks, some for added
9 protection, some for medical, some, you know -- we just
10 can't say that that was limited there and, you know, to
11 folks who had a religious exemption.

12 THE COURT: I don't have any other questions for
13 you.

14 MR. MARTIN: Okay.

15 THE COURT: Not that you're not welcome to make
16 more argument. I just --

17 MR. MARTIN: No. I mean, I do think -- you know,
18 there's a body of case law pre-COVID, and I think there's a
19 body that's emerging, you know, in-COVID or post-COVID or
20 wherever we're at right now, you know, but the cases are
21 coming out in favor on this. You know, there's the *Sharikov*
22 case that we cited in our materials. There's the *McManus*
23 case. There's the *Leake* case. And there are issues in
24 there that are pretty on point to what we have here.

25 So thank you, Your Honor.

1 THE COURT: Thank you.

2 Ms. Anderson, I did neglect to ask you about the
3 hostile work environment claim. And so I'm curious whether
4 your complaint encompasses both a discrimination case claim
5 that requires adverse employment action and a hostile work
6 environment claim?

7 MS. ANDERSON: It does, Your Honor.

8 THE COURT: Okay.

9 MS. ANDERSON: Yes. Yes, we intended to allege a
10 hostile work environment claim.

11 THE COURT: All right. Is there anything else
12 that you want to say in rebuttal?

13 MS. ANDERSON: Yes, just to respond to a few
14 points.

15 You know, it was much more than a suggestion to
16 get vaccinated. It was a requirement to get vaccinated
17 under threat of losing your livelihood. And he had worked
18 there for a very long time, had invested a lot in this
19 company, and now was being threatened to lose that based off
20 of how they ruled on his exemption request, and a lot of
21 people's exemption requests were being denied, and, you
22 know, that was an ongoing discussion.

23 In terms of wearing the mask, that was a
24 requirement only for unvaccinated individuals. So in some,
25 you know, to some extent you were being ousted to your

1 fellow co-workers if you were required to wear a mask. And,
2 you know, that can create also a hostile environment when
3 you have people who are very adamant about getting
4 vaccinated.

5 And opposing counsel mentioned about, you know, he
6 didn't seek exemption until November. There was no mandate
7 until September. There was no process to seek an exemption
8 until September or until 3M announced it. And there would
9 have been no reason for him to discuss his religious beliefs
10 with his co-workers, with his supervisors until that time.
11 So there was no legitimate reason for 3M to know about them
12 until that time; but once they were released, 3M was fully
13 aware of his religious objections to the vaccine and the
14 pressure continued regardless.

15 I would just also like to point out, you know, the
16 Supreme Court held Title VII's prohibition does not, is not
17 limited to just economic or tangible discrimination. That's
18 why this hostile work environment claim exists. And, you
19 know, the Supreme Court has also been clear that it doesn't
20 have to -- harassing conduct doesn't have to lead an
21 employee to an emotional breakdown in order to be
22 actionable.

23 And in this case you had somebody who did have
24 severe anxiety over this situation, who did have sincere
25 religious objections and had communicated those to the best

1 of his ability. And, you know, an employer does not have to
2 bring the employee's psychological well-being and under
3 severe threat in order for a Title VII claim to be brought.

4 THE COURT: Thank you.

5 MS. ANDERSON: Thank you, Your Honor.

6 THE COURT: Having reviewed the complaint and the
7 memoranda that you all have prepared and your argument here
8 today, I have no doubt that this situation caused stress.
9 It caused stress all over the country, because we were all
10 dealing with the vaccination status of each other and that
11 was an employment issue for many, many people; but the facts
12 in this complaint do not rise to the level of a federal
13 claim.

14 And I'm going to make my ruling from the bench. I
15 will follow it up with a brief order.

16 It is as follows: First, the legal standard. To
17 survive a motion to dismiss under Rule 12(b)(6), the
18 complaint must contain enough facts to state a claim to
19 relief that is plausible on its face. That comes from
20 *Twombly*. A claim has facial plausibility when the plaintiff
21 pleads factual content that allows the court to draw the
22 reasonable inference that the defendant is liable for the
23 misconduct alleged. At this stage in the litigation, the
24 court accepts as true all factual allegations in the
25 complaint, draws all reasonable inferences in the

1 plaintiff's favor. Factual allegations in the complaint
2 need not be detailed, but they must be enough to raise a
3 right to relief above a speculative level. Again, that is
4 from *Twombly*.

5 Mr. Clobes has brought a religious discrimination
6 claim under both Title VII and the MHRA. In construing the
7 MHRA, which these federal courts do all the time in this
8 district, courts apply both Minnesota case law and the law
9 developed in federal cases arising under Title VII of the
10 1964 Civil Rights Act. That statement comes from *Fletcher*
11 *v. St. Paul Pioneer Press*, 589 N.W.2d 96, Minnesota Supreme
12 Court 1999.

13 So I'm going to address both the religious
14 discrimination claims and the hostile work environment
15 claims.

16 As to religious discrimination, to establish a
17 prima facie case, Mr. Clobes must show that he's a member of
18 the protected class; he was meeting the legitimate
19 expectations of his employer; he suffered an adverse
20 employment action; and similarly situated employees who were
21 not members of the protected class were treated differently.
22 That comes from *Singletary versus Missouri Department of*
23 *Corrections*, 423 F.3d 886, at Eighth Circuit 2005.

24 Although a plaintiff need not plead facts
25 establishing a prima facie case for their Title VII

1 discrimination claim at the pleading stage, the elements of
2 a prima facie case are part of the background against which
3 a plausibility determination should be made and may be used
4 as a prism to shed light on the plausibility of the claim.
5 And that comes from *Blomker v. Jewell*, 831 F.3d 1051, Eighth
6 Circuit 2016. Thus, the allegations in a complaint must
7 give plausible support to the reduced prima facie
8 requirements that arise under *McDonnell Douglas*. And that
9 is *Warmington versus Board of Regents of the University of*
10 *Minnesota*, 998 F.3d 789, Eighth Circuit 2021.

11 Here, the amended complaint -- actually, it's a
12 verified complaint -- fails to allege facts plausibly
13 supporting the third and fourth elements of the religious
14 discrimination claim, and those are adverse employment
15 action and inference of discrimination.

16 As to the adverse employment action, that means
17 termination, demotion, transfers involving changes in pay or
18 working conditions and negative evaluations used as the
19 basis for other employment action. That comes from *Huynh*
20 *versus United States DOT*, 794 F.3d 952. Accepting the
21 statements in the complaint as true, Mr. Clobes did not
22 suffer any adverse employment actions. At most, he claims
23 to have felt pressured to get a vaccination or singled out
24 for having to wear a mask. Those are not adverse employment
25 actions. In *Harlston versus McDonnell Douglas Corp.*, which

1 is 37 F.3d 379, the Eighth Circuit noted that changes in
2 duties or working conditions that establish or cause no
3 materially significant disadvantage are insufficient to
4 establish adverse conduct required to make a prima facie
5 case. Put another way, not everything that makes an
6 employee unhappy is an actionable adverse employment action.
7 And that's from *LaCroix versus Sears, Roebuck*, 240 F.3d 688,
8 Eighth Circuit 2001. So there's no adverse action, meaning
9 no prima facie case.

10 There is also no inference of discrimination that
11 can be gleaned from the complaint. That is the fourth
12 element of the prima facie case. He has not pled that 3M
13 treated similarly situated employees outside the protected
14 class of religious objectors differently. There's nothing
15 in the complaint supporting an inference of discrimination.
16 The masking requirement was tied to his vaccination status,
17 not his religion. Because there was no claim that employees
18 with other reasons for remaining unvaccinated were treated
19 differently, Mr. Clobes fails to plead circumstances giving
20 rise to an inference of discrimination.

21 Thus, because he fails to meet two elements of the
22 prima facie case, his claims are not plausible under *Iqbal*
23 and *Twombly* and they must be dismissed.

24 As to the hostile work environment. For this
25 claim as well, the court analyzes it under Title VII's

1 framework. Under Minnesota law, *LaMont versus Independent*
2 *School District*, 814 N.W.2d 14, Minnesota Supreme Court
3 2012, uses the Title VII framework to bolster its holding in
4 an MHRA lawsuit relying on language that federal court
5 decisions are instructed and have been applied by the
6 Minnesota Supreme Court when construing the MHRA.

7 All right. As to the hostile work environment.
8 To establish that claim, Mr. Clobes must prove that he was
9 the target of severe or pervasive harassment on account of
10 his religion, that the harassment affected a term, condition
11 or privilege of his employment and that 3M knew or should
12 have known of the racial -- or sorry -- of the religious
13 harassment and failed to take adequate remedial measures.
14 That comes from *Woodland versus Joseph T. Ryerson & Son*, 302
15 F.3d 839, Eighth Circuit 2002. Conduct that is not severe
16 or pervasive enough to create an objectively hostile or
17 abusive work environment -- an environment that a reasonable
18 person would find hostile or abusive -- is beyond
19 Title VII's purview.

20 The complaint alleges nothing that links
21 Mr. Clobes' religion to 3M's efforts to ensure its employees
22 were vaccinated against COVID. For example, there are no
23 allegations that assert 3M's emails and other communications
24 about vaccines had anything to do with his religion or in
25 fact were directed at him individually.

1 The complaint also does not allege conduct that is
2 severe or pervasive sufficient to support a hostile work
3 environment theory. There are two failings that fall in
4 this category. First is the email and loudspeaker
5 announcement referenced in the complaint. Those are not
6 severe or pervasive enough to support a hostile work
7 environment claim. Second, Clobes does not allege that
8 these actions were targeted specifically at him. Several
9 courts, noted in the defendant's opening brief at pages 12
10 and 13, have concluded similarly. The court notes in
11 particular the recent case of *Leggo v. M.C. Dean*, 2023
12 Westlaw 1822383 out of the Eastern District of Virginia,
13 decided earlier this year, which is, of course, not binding
14 on this court, but I do find its reasoning persuasive.

15 So accepting as true what I said at the outset
16 that Mr. Clobes, like many other employees around the
17 country, felt pressured to receive the vaccination and that
18 he felt uncomfortable with both that pressure and with the
19 mask requirement, the circumstances do not as a matter of
20 law create a hostile work environment. So 3M's motion to
21 dismiss the hostile work environment claim is granted.

22 Now, Ms. Anderson, I understand that you and your
23 client have asked for leave to amend the complaint in the
24 event that the court finds that the current complaint fails
25 the plausibility standard, which the court has just

1 concluded. I'm not seeing any additional facts that you've
2 identified that would establish a viable claim, and there is
3 no submitted proposed amended complaint, which is required
4 by Local Rule 15.1(b). So I am denying the request for
5 leave to amend.

6 In *O'Neil v. Simplicity, Inc.*, the Eighth Circuit
7 has noted -- and that's at 574 F.3d 501 -- a district court
8 does not abuse its discretion in denying leave to amend
9 where a plaintiff has not followed applicable procedural
10 rules. More importantly, I simply can't guess at what might
11 be alleged to determine whether the amendment might be
12 futile. And for that I cite *Meehan versus United Consumers*
13 *Club Franchising Corp.*, 312 F.3d 909, Eighth Circuit 2002,
14 noting that a district court in such a situation is not
15 required to engage in a guessing game. I will, however,
16 decline the request by the defendant to dismiss the
17 complaint with prejudice, and I'm dismissing it without
18 prejudice.

19 My written order will state that for the reasons
20 that I have just gone through on the record that 3M's motion
21 to dismiss is granted and the case is dismissed without
22 prejudice and judgment will be entered.

23 I thank you for your arguments here today. And
24 with that, I'm concluding the hearing, unless there's
25 anything else from the plaintiff.

1 Ms. Anderson?

2 MS. ANDERSON: Nothing, Your Honor.

3 THE COURT: Thank you.

4 Mr. Martin, from the defense?

5 MR. MARTIN: Nothing, Your Honor.

6 THE COURT: Thank you, everyone.

7 THE CLERK: All rise. Court is in recess.

8 (Court adjourned at 2:00 p.m., 04-20-2023.)

9 * * *

10 I, Renee A. Rogge, certify that the foregoing is a
11 correct transcript from the record of proceedings in the
12 above-entitled matter.

13 Certified by: /s/Renee A. Rogge
14 Renee A. Rogge, RMR-CRR

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